

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>STEVE LAYTON,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>DARIN YOUNG, Warden at South Dakota State Penitentiary in his individual and official capacity; ALCOCK, Associate Warden at South Dakota State Penitentiary in his individual and official capacity; and JENNIFER DRIESKE, Deputy Warden at South Dakota State Penitentiary in her individual and official capacity,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">4:20-CV-04094-LLP</p> <p style="text-align: center;">ORDER GRANTING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS AND REQUIRING PLAINTIFF TO PAY AN INTIAL PARTIAL FILING FEE</p>
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Plaintiff, Steve Layton, filed a pro se lawsuit under 42 U.S.C. § 1983. Doc. 1. Layton filed a motion for leave to proceed in forma pauperis and provided the Court with his prisoner trust account report. Docs. 6, 7. Under the Prison Litigation Reform Act (PLRA), a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “ ‘[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’ ” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

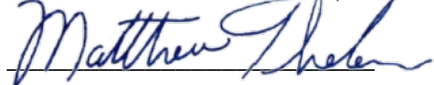
Layton has reported an average monthly balance for the past six months to his prisoner trust account of \$182.62, and an average monthly deposit of \$151.67 Doc. 7. Based on this information, the court grants Layton leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$36.52 (20 percent of his average monthly balance). Layton must pay the initial partial filing fee of **\$36.52 by September 11, 2020**. Failure to pay the filing fee by September 11, 2020, will result in dismissal without prejudice of Layton's Complaint.

Thus, it is ORDERED:

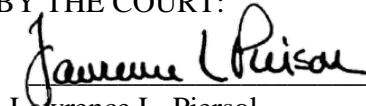
1. That Layton's motion for leave to proceed in forma pauperis (Doc. 6) is granted. Layton will make a payment of **\$36.52 by September 11, 2020**, made payable to the Clerk, U.S. District Court. If Layton does not pay the initial partial filing fee by September 11, 2020, his Complaint will be dismissed without prejudice. The Court will conduct a 28 U.S.C. § 1915A screening and address Layton's pending motion for appointment of counsel after he pays his initial partial filing fee.
2. That the institution having custody of Layton is directed that whenever the amount in Layton's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Layton's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED August 18 2020.

ATTEST:
MATTHEW W. THELEN, CLERK



BY THE COURT:



Lawrence L. Piersol
United States District Judge